

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS BIRD,

Petitioner,

Case No. 2:17-cv-10028
Hon. Victoria A. Roberts

v.

PAUL KLEE,

Respondent.

**OPINION AND ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS
WITHOUT PREJUDICE, DENYING CERTIFICATE OF APPEALABILITY, AND
DENYING PERMISSION TO APPEAL IN FORMA PAUPERIS**

Petitioner, Dennis Bird, is in state custody at the Gus Harrison Regional Facility, in Adrian, Michigan. His imprisonment results from his Kent County Circuit Court jury trial conviction of multiple counts of first and second-degree criminal sexual conduct. Bird filed this pro se petition for writ of habeas corpus, challenging the decision of a Lenawee County Circuit Court order denying his state petition for a writ of habeas corpus which challenged the validity of his Kent County convictions. See Dkt. 1, at Page ID 62. Prior to filing the present petition, Bird filed a petition directly challenging these same convictions. See *Bird v. Klee*, No. 2:16-cv-12973.

“[A] suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions.” *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993) (internal quotation marks and citations omitted). A district court may dismiss a habeas petition when it is duplicative of a pending habeas petition. See *Davis v. U.S. Parole Com’n*, 870 F.2d 657, 1989 WL 25837 (6th Cir. 1989); *Marks v. Wolfenbarger*, No. 2:06-cv-14325, 2006 U.S. Dist. LEXIS 71937, 2006 WL 2850340, *1 (E.D. Mich. Oct. 3, 2006) (same); *Fuson v. Harry*, No. 06-13211-BC, 2006

U.S. Dist. LEXIS 87993, 2006 WL 2421639, *1 (E.D. Mich. Aug. 22, 2005) (same). This petition appears to be duplicative of the earlier-filed petition because both cases seek Petitioner's release from custody on the grounds that his Kent County convictions are invalid. The present case shall therefore be dismissed. To the extent that Petitioner is attempting to raise new substantive claims challenging his conviction, he may move to file an amended petition in his earlier-filed case.

Accordingly, **IT IS ORDERED** that the petition [Dkt. No. 1] is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that a certificate of appealability and permission to appeal this order in forma pauperis are **DENIED** because this order is not reasonably debatable and any appeal would be frivolous. See 28 U.S.C. § 2253(c)(2); 28 U.S.C. § 1915(a)(3).

S/Victoria A. Roberts
United States District Judge

Dated: January 17, 2017